

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1666 of 1981

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RANCHHODBHAI L PATEL

Versus

ANAND MUNICIPALITY

Appearance:

MR MR ANAND for Petitioner
MR KM PATEL for Respondent No. 1
SERVED for Respondent No. 2, 4, 5
M/S PATEL ADVOCATES for Respondent No. 3

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

Date of decision: 14/11/97

ORAL JUDGMENT (PER K.SREEDHARAN CJ.):

Tenant of Plot No.112, renumbered as final Plot No.102, in the Town Planning Scheme No.2 of Anand Town, has filed this petition, inter alia, challenging the

constitutional validity of the Town Planning Scheme and final order passed thereon.

It is his case that before the final order was passed no notice was issued to him and therefore, the final order passed thereon which adversely affects his rights in the property is invalid.

Original petitioner Patel Ranchhodbhai Lallubhai passed away during the pendency of this petition. His son Patel Ashvinbhai Ranchhodbhai has now come forward to prosecute the proceedings by filing Civil Application on 19-1-1995. He is allowed to be joined as heir of the original petitioner and to prosecute the proceedings.

In Prakash Amichand Shah Vs. State of Gujarat and Ors. AIR 1986 SC 468, a Constitution Bench of the Supreme Court upheld the validity of the Bombay Town Planning Act (27 of 1955). In view of the said decision, challenge made against the provisions of the said Act in this petition is fully required to be rejected and we do so.

The petitioner was a tenant of the plot covered under the said Town Planning Scheme under the Act. Therefore, as a tenant he was entitled to notice. This legal position is settled by the Apex Court in the decisions in Jaswant Singh Mathurasingh and anr. Vs. Ahmedabad Municipal Corporation & Ors. AIR 1991 SC 2130 and the Municipal Corporation Vs. M/s. Chhelaram & Sons & anr. JT 1996(8) SC 583. The petitioner has specifically averred that no notice was issued to him prior to the finalization of the scheme. In reply to this the respondents have averred that the Town Planning Officer issued notice dated April 27, 1971 stating that T.P. Scheme is prepared and the Government is going to finalise the same. The petitioner filed his reply dated May 4, 1971 and he was heard on that reply on that day itself. It is further stated in the Affidavit-in-reply that a second notice dated July 8, 1971 was also issued to the petitioner. Copies of the abovementioned two notices and a copy of the reply filed by the petitioner have been placed on record as Annexures I, II and III with the affidavit-in-reply filed on behalf of respondent nos. 2 and 3. From the averments in the affidavit filed on behalf of respondent nos. 2 and 3 and Annexures I, II and III, it is beyond controversy that the notices were issued in favour of the petitioner prior to the finalization of the scheme and the petitioner's contentions were heard by the Town Planning Officer. In light of these documentary evidence and the specific

avermment in the affidavit-in-reply, it is too late in the day for the petitioner to raise a contention that the scheme was finalized without affording the petitioner an opportunity of being heard in the matter.

The constitutional validity of the provisions of the Act has been upheld by the Apex Court. The notice contemplated by the Act was in fact issued to the petitioner prior to the finalization of the scheme. He in fact submitted his written objections. After considering the objections and after hearing the petitioner the scheme was finalized. Therefore, it is not open to the petitioner to contend that the proceedings were initiated and the final order was passed behind his back. We do not find any ground to interfere with the order finalizing the scheme. The petition therefore, deserves to be dismissed and is accordingly dismissed.

Rule is discharged. Parties to bear their own cost.

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